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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of
DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

RAINBOW HAWAII FARMS, LLC,

Respondent.

CASE NO. OSH 2009-20
Inspection No. 311435853

ORDER NO. 331

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on July 6, 2009, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Raymond C. Young, for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 29 CFR 1910.142(b)(9)

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435853, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1910.142(b)(9) was violated because:

Food storing and preparation areas (kitchen counter top and an old electrical stove top) were not maintained in a sanitary condition. By preparing the food in an unsanitary environment, the employee(s) were potentially exposed to food borne illnesses.

2. Citation 1, Item 2 29 CFR 1910.142(j)

Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435853, was valid and proper?

Citation 1, Item 2 alleged:

29 CFR 1910.142(j) was violated because:

Effective measures for insect and rodent control had not been taken to prevent infestation. Various insects and insect vectors were observed during the inspection. By living in an environment where no effective measures were taken to control insects and rodents, the employee(s) were potentially exposed to vector borne illnesses carried by insects and rodents.

3. Citation 1 Item 3 29 CFR 1910.303(b)(2)

Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435853, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.303(b)(2) was violated because:

Following listing/labeling violations were observed at the establishment. By using the equipment, which did not meet listing/labeling requirements, the employee(s) were potentially exposed to serious electrical injuries.

- A 20 foot orange extension cord modified/spliced (sic) into an exterior light fixture (Main entrance area facing the packing facility).
- A duplex receptacle was used without being mounted on the wall (Kitchen).

4. Citation 1 Item 4a 29 CFR 1910.304(a)(2)

Whether Citation 1, Item 4a, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435853, was valid and proper.

Citation 1, Item 4a alleged:

29 CFR 1910.304(a)(2) was violated because:

A duplex wall outlet was verified to have reverse polarity. By using the improperly installed wall outlet, the employee(s) were potentially exposed to serious electrical injuries.

5. Citation 1, Item 4b 29 CFR 1910.304(g)(5)

Whether Citation 1, Item 4b, including the characterization as "Serious", resulting from Inspection No. 311435853, was valid and proper.

Citation 1, Item 4b alleged:

29 CFR 1910.304(g)(5) was violated because:

The grounding path from an old electrical stove was not permanent, continuous, and effective. The electrical stove was not properly grounded, without proper grounding path, the employee(s) were potentially exposed to serious electrical injuries.

6. Citation 1, Item 5 29 CFR 1910.305(b)(2)(i)

Whether Citation 1, Item 5, including the characterization as "Serious" and the associated penalty of \$750.00, resulting from Inspection No. 311435853, was valid and proper.

Citation 1, Item 5 alleged:

29 CFR 1910.305(b)(2)(i) was violated because:

A duplex outlet was missing its faceplate. Without a proper faceplate, the employee(s) were potentially exposed to serious electrical injuries.

7. Citation 2 Item 1 29 CFR 1910.142(b)(3)

Whether Citation 2, Item 1, including the characterization as "Other", resulting from Inspection No. 311435853, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.142(b)(3) was violated because:

Bedding sets were not elevated at least 12 inches from the floor.

8. Citation 2, Item 2 29 CFR 1910.142(b)(8)

Whether Citation 2, Item 2, including the characterization as "Other", resulting from Inspection No. 311435853, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.142(b)(8) was violated because:

Three screen doors, including the housing main entrance door and two kitchen doors, were not equipped with self-closing devices.

9. Citation 2, Item 3 29 CFR 1910.142(f)(2)

Whether Citation 2, Item 3, including the characterization as "Other", resulting from Inspection No. 311435853, was valid and proper.

Citation 2, Item 3 alleged:

29 CFR 1910.142(f)(2) was violated because:

A partition wall of the shower tub was partially broken exposing a 2 x 3 foot opening.

10. Citation 2, Item 4 29 CFR 1910.305(g)(1)(iv)(A)

Whether Citation 2, Item 4, including the characterization as "Other", resulting from Inspection No. 311435853, was valid and proper.

Citation 2, Item 4 alleged:

29 CFR 1910.305(g)(1)(iv)(A) was violated because:

Two power strips were used as a substitute for fixed wiring of a structure to provide power to refrigerators, fans, etc.

11. Citation 2, Item 5 29 CFR 1910.305(g)(1)(iv)(C)

Whether Citation 2, Item 5, including the characterization as "Other", resulting from Inspection No. 311435853, was valid and proper.

Citation 2, Item 5 alleged:

29 CFR 1910.305(g)(1)(iv)(C) was violated because:

An orange extension cord, which was modified and connected to an exterior light fixture, ran through the housing main entrance doorway to be plugged into an interior wall receptacle.

- B. The deadline for the parties' final naming of witnesses is **August 10, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **September 8, 2009**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. Trial in this matter is scheduled for **November 4 - 5, 2009 at 8:30 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.

- E. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, July 8, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Raymond C. Young